IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.A. No.83-SB of 1994.

Date of Decision: 9.3.2007.

Hardip Singh.

....Appellant.

Versus

State of Punjab.

...Respondent.

CORAM : Hon'ble Mr. Justice A.N.Jindal.

Present:- Mr.Ch.Kundan Lal,Advocate
for the appellant.

Mr.M.S.Joshi, DAG Punjab,
for the respondent.

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A.N.JINDAL, J.

Hardip Singh, accused-appellant (hereinafter referred to 'as the accused') has called in question the judgment of conviction and sentence dated February 2, 1994, passed by Additional Sessions Judge, Amritsar, whereby the accused was convicted for kidnapping Lovely a minor son of Karam Singh of his own village on 7.9.1989 at about 6:30 p.m. with the intention of murdering him, and sentenced him to undergo RI for a period of four years and to pay a fine of Rs.1000/- or in default of payment of fine to undergo further RI for a period of three months.

Karam Singh was having a daughter namely Kanwaljit Kaur and a son Lovely aged about 6 years. They were studying tuition with the daughter of Darshan Dyal of their village. On 7.9.1989 at about 6:30 p.m.

when both his son and daughter were coming back from tuition, Lovely was kidnapped and did not return home. Kanwaljit Kaur disclosed that the accused, had taken him on his motor cycle No.3804 for a joy ride. Jagjit Singh alias Raju was also accompanying him. Despite search made by the complainant, Lovely was not traceable. Similarly accused Hardip Singh and Jagjit Singh alias Raju (since deceased) were also missing from their houses. Thus, the complainant doubted that his son Lovely had been kidnapped by the accused persons to extort money.

On the aforesaid statement Ex-PA formal FIR Ex.PA/2 was registered against the accused under section 364/34 of Indian Penal Code and the investigation was commenced. On 17.9.1989 Karam Singh, complainant, produced a threatening letter Mark `A' written by the accused party demanding a ransom for return of the child, which was taken into possession by the investigating officer vide memo Ex-PB.

Thereafter on 28.9.1989, SI Gurbachan Singh along with other police officials was proceeding from village Bhandal towards Beharwal in connection with search of the accused persons as well as the child and when they reached slightly behind the kacha path leading from village Kalanjar to Beharwal, they spotted the accused coming on his motor cycle bearing No.PUW 3804 from the side of village Kalanjar. Hardip Singh was driving the motor cycle while Jagjit Singh was sitting on the back side and the minor Lovely was being carried by them with his face covered with a piece of cloth. The police party apprehended them and recovered the minor child. SI Gurbachan Singh also prepared rough site plan Ex.PF of the place of apprehension. Child was handed over to Karam Singh. On 30.9.1989 the investigating officer moved an application for allowing him to seek

handwriting of the accused for the purpose of comparison but both of them refused to give the handwriting. On completion of investigation the challan was presented against the accused. Formal charge against them under Section 364 of the Indian Penal Code was framed but they pleaded not guilty and claimed trial.

During the pendency of the trial Jagjit Singh died. Consequently, the proceedings against him stood abated.

To substantiate its case the prosecution examined Karam Singh complainant (PW1), Kanwaljit Kaur (PW2), SI Gurbachan Singh Investigating Officer (PW3) and Joginder Singh, Translator of the Court (PW5). Lovely the kidnappee was also examined without oath as PW4.

When examined under Section 313 Cr.P.C. accused Hardip Singh denied all the allegations and pleaded his false implication in the case. He further added that at the relevant time he had some quarrel with Karam Singh complainant as a result of which Karam Singh felt offended against him. Accused was then implicated in this case falsely in connivance with the local police. He also stated that Karam Singh was related to him and there was no question of kidnapping his minor child. Despite opportunity provided to him he did not lead any evidence in defence.

Trial ended in conviction. Hence this appeal.

Having heard the rival contentions and having perused the records of the case it would be pertinent to mention that father of kidnappee was a Gold Smith. Those were the days of terrorism. The accused and the complainant were related to each other. Admittedly, Lovely was kidnapped on 7.9.1989 at 6:30 p.m. Kanwaljit Kaur a minor child who was accompanying the accused stated in unambiguous word that the accused to

whom she knew earlier as he has been running a medical shop in their village took away her brother Lovely about which she immediately informed her mother. Consequently FIR was lodged at the police station in which the name of the accused was specifically named as kidnapper. It is also evident from the deposition of Karam Singh PW1 that accused was distantly related to him. It has also been proved on record that accused were also found missing from their houses since 7.9.1989 till 28.9.1989 when the minor Lovely was recovered from their custody. Sufficient evidence has been led that the complainant as well as the police was in search of the child and the accused, is the story set up by the prosecution regarding the kidnapping, was not correct then the accused could come forward with a version that the child has not been kidnapped by them and he was staying somewhere else. No explanation to the letter Mark `A' as has been proved by the prosecution on record has been made by the accused whereas the accused would well revert the evidence in the shape of said letter by examining any expert and could prove that it was not in their handwriting. Even the minor Lovely has also stated that he was kidnapped by the accused. Though the complainant has set up the defence version that due to remote relationship between him and Karam Singh, complainant, there was a dispute between them as a result of which the complainant felt offended and implicated him in this false case. Yet the accused by way of any cogent and convincing evidence has not proved that the dispute was of such a grave nature to which both the accused committing such a heinous crime of kidnapping the minor and confined him at such a secret place. No allegation has been levelled or proved on record to establish that the complainant had any enmity to implicate the accused falsely in this case.

Consequently I do not stand to differ with the finding returned by the trial Court. Now coming to the question of sentence the case was registered against the accused in the year 1989 and he faced trial for five years. Now this appeal is pending adjudication for the last 12 years. At the same time though I do not ignore the agony suffered by the complainant due to the kidnapping of his minor son and the terror created by the accused for non restoring him for 20 days yet the delay in disposal of the appeal can be a mitigating circumstance to take a lenient view.

For the afore-stated reasons I hereby dismiss the appeal with the modification that the sentence awarded by the trial Court against the accused is reduced to three years. However, the sentence of fine will remain intact. The Chief Judicial Magistrate, Amritsar, is directed to take necessary steps to procure the custody of the accused-appellant to serve the remaining part of his sentence.

(A.N.JINDAL)
JUDGE

March 9,2007
Reema